

KASOWITZ BENSON TORRES LLP

DANIEL J. FETTERMAN
DIRECT DIAL: (212) 506-1934
DIRECT FAX: (212) 500-3434
DFETTERMAN@KASOWITZ.COM

1633 BROADWAY
NEW YORK, NEW YORK 10019
(212) 506-1700
FAX: (212) 506-1800

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Application **GRANTED**.

The Court will enter the amended case management plan by separate order.


September 10, 2024

The Clerk of Court is respectfully directed to close ECF Nos. 124, 125.

VIA ECF

SO ORDERED.

The Honorable Dale E. Ho
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007


Dale E. Ho
United States District Judge
Dated: September 11, 2024
New York, New York

Re: Kenneth P. Silverman, Esq. v. Citibank, N.A., Case No. 22-cv-5211 (DEH) (the “Action”)

Dear Judge Ho:

We represent Plaintiff Kenneth P. Silverman, Esq., Chapter 7 Trustee (“Plaintiff”)¹ in this Action, and respectfully submit this letter, jointly with counsel for defendant Citibank, N.A. (“Citibank,” and together with Plaintiff, the “Parties”), pursuant to Your Honor’s Individual Rule 2(e) to request that the Court enter a modified Civil Case Management Plan and Scheduling Order attached hereto as Exhibit A (the “Revised CMO”).

On November 6, 2023, Judge Woods, who previously oversaw the Action, granted in part and denied in part Citibank’s motion to dismiss [Docket No. 88]. On December 19, 2023, Your Honor entered a Civil Case Management Plan and Scheduling Order (“CMO”) [Docket No. 99] which initially required fact discovery to be completed by May 6, 2024, with various other dates keyed off of that deadline. Citibank thereafter filed a motion for judgment on the pleadings to dismiss Plaintiff’s second cause of action, briefing on which was completed on April 10, 2024, and which remains pending before the Court. On April 19, 2024, Your Honor entered a revised CMO [Docket Nos. 113-114], which required that fact discovery be completed by July 12, 2024. On July 2, 2024, Your Honor entered a modified CMO [Docket Nos. 117-118], which required that fact discovery be completed by September 30, 2024, with various other dates again keyed off of that deadline.

The Parties now jointly request that the fact discovery cutoff be extended to and including November 14, 2024, and that the other case deadlines be modified as reflected in the proposed changes between the current CMO and the Revised CMO attached hereto as Exhibit B.

¹ Plaintiff is the Chapter 7 Trustee of the bankruptcy estates of National Events Holdings, LLC, *et al.* (collectively, the “Debtors”), in the Debtors’ bankruptcy cases pending in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), jointly administered as Case No. 17-11556 (JLG).

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This is the third and final request for an extension of these case deadlines. The Parties' next scheduled appearance before the Court is the February 18, 2025, case management conference.


The Parties respectfully submit that good cause exists to modify the CMO. The Parties have been conferring in good faith and believe that – despite the current impasse – with the additional time they could further narrow or resolve many of the outstanding document discovery issues outlined in the Plaintiff's letter to the Court dated September 5, 2024 [Docket No. 124] (the "Pre-Motion Letter Re Motion To Compel") and avoid potential disputes about recalling deponents if relevant documents are produced after their depositions. The Parties to date have already completed substantial discovery – including the completion of seven depositions² – and believe that this brief extension could be used productively to streamline remaining document discovery, narrow or resolve remaining disputes, and reduce or hopefully eliminate the burden on this Court and deponents in this Action.

If the Court grants this application, Plaintiff's Pre-Motion Letter Re Motion To Compel would be withdrawn without prejudice, the Parties will continue meeting and conferring to narrow or resolve as many outstanding issues as possible and will report back to the Court on September 23, 2024, as to which, if any, issues still require the Court's intervention. If any such issues remain, Plaintiff also would simultaneously submit a revised pre-motion letter regarding a proposed motion to compel on those issues to which Defendant would respond within three business days. If the Court denies this application, Plaintiff agrees that Defendant can respond to the Pre-Motion Letter Re Motion To Compel within three business days of the Court's denial.

Additional details of the discovery requests propounded and the document productions made to date, as required by Your Honor's Individual Rule 2(e)(vi), are set forth in the attached Appendix.

We thank the Court in advance for its attention to this application, and the Parties are, of course, available should Your Honor have any questions concerning this joint application.

Respectfully,



Daniel J. Fetterman

cc: John Gueli, Esq.

² The Parties have noticed and/or subpoenaed approximately eighteen witnesses in the Action, resulting to date in seven depositions. On June 26 and 27 and August 12, 2024, Citibank took the depositions of three witnesses from two of the Assignors (defined *infra*, in the Appendix hereto). On August 9, 16, and 23, 2024, Plaintiff took the depositions of three Citibank witnesses. Additionally, on August 22, 2024, Plaintiff took an approximately five-hour deposition in this Action of an additional Citibank witness who had been previously deposed pursuant to an order of the Bankruptcy Court. Approximately eleven witnesses currently are scheduled to be deposed on or before September 30, 2024.

APPENDIX

Discovery Requests Propounded, and Depositions Taken, by Plaintiff

- Plaintiff propounded discovery requests in connection with pre-complaint discovery authorized by the Bankruptcy Court under Bankruptcy Rule 2004 on August 31, 2017 and September 9, 2021 [Docket No. 112, Ex. C]. In response to those requests, Citibank produced approximately 3,360 documents. Those documents were responsive to additional discovery requests propounded by Plaintiff in this Action on November 27, 2023 [Docket No. 112, Ex. D]. Citibank made supplemental productions totaling approximately 2,975 new documents on the following dates in 2024: March 8; April 26; June 21; July 3, 12, 31; August 7, 10, 19, 21, 22, 23, 30; and September 9, 2024. Plaintiff served a document deficiency letter on Citibank on July 19, 2024, detailing certain categories of documents that Plaintiff believed were missing from Citibank's document productions. Citibank responded on July 31, 2024, and produced certain additional documents. Plaintiff reviewed these documents and replied on August 19, 2024, and identified documents Plaintiff believed still were required to be produced, and Citibank answered on August 26, 2024, producing certain additional supplemental documents. As detailed in his Pre-Motion Letter Re Motion To Compel filed September 5, 2024, Plaintiff still believes that numerous categories of required documents remain missing. Defendant disagrees and disputes the timeliness and relevance of the remaining requests.
- On August 9, 16, 22, and 23, 2024, Plaintiff deposed four Citibank witnesses.

Discovery Requests Propounded, and Depositions Taken, by Defendant

- Citibank propounded discovery requests to Plaintiff on November 27, 2023 [Docket No. 112, Ex. E]. Plaintiff has produced approximately 129,021 pages and believes his document production in this Action was substantially completed on June 3, 2024.
- Citibank served subpoenas on the three creditors of the Debtors that assigned their claims against Citibank to Plaintiff (collectively, the "Assignors") as follows:
 - Falcon Strategic Partners IV, LP and FMP Agency Services, LLC (together, "Falcon") [Docket No. 112, Ex. F]. Falcon made productions to date on: April 8, 2024 (approximately 704 documents); April 10, 2024 (approximately 1,404 documents); April 12, 2024 (approximately 704 documents); April 16, 2024 (approximately 1,404 documents); April 18, 2024 (approximately 1,404 documents); April 19, 2024 (approximately 2,107 documents); April 23, 2024 (approximately 2,091 documents); and July 22, 2024 (one document).
 - Hutton Ventures LLC ("Hutton") [Docket No. 112, Ex. G]. Hutton and its counsel provided approximately 330 documents to Plaintiff (who then produced them to Citibank) in April 2024, and Hutton produced approximately 58 additional documents to Citibank on June 7, 2024.
 - SLL USA Holdings, LLC and Taly USA Holdings Inc. (collectively, "Taly") [Docket No. 112, Ex. H]. Taly produced approximately 688 documents from March 20 to April 16, 2024, and approximately 578 documents on July 19 and August 21, 2024.
- Citibank deposed two of Hutton's witnesses in the Action on June 26 and 27, 2024, and Falcon's witness in the Action on August 12, 2024.